



Northern Ireland
Assembly

Audit Committee

OFFICIAL REPORT (Hansard)

Budget 2021-22:
Northern Ireland Public
Services Ombudsman

7 October 2020

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Daniel McCrossan (Chairperson)
Ms Joanne Bunting (Deputy Chairperson)
Mr Jim Allister
Mr Alan Chambers
Ms Emma Rogan

Witnesses:

Mr Paul McFadden	Northern Ireland Ombudsman's Office
Mr John McGinnity	Northern Ireland Ombudsman's Office
Ms Margaret Kelly	Northern Ireland Public Services Ombudsman

The Chairperson (Mr McCrossan): I welcome our NIPSO witnesses and thank them for attending: Margaret Kelly, the newly appointed ombudsman, and Paul McFadden. Joining us on StarLeaf is John McGinnity, director of finance. It is very good to meet you again, Margaret. Paul, you are welcome back to the Committee. I invite witnesses to make a short statement and ask them to keep their opening remarks as brief as possible. Thank you very much.

Ms Margaret Kelly (Northern Ireland Public Services Ombudsman): Thank you, Mr Chairman and members, and thank you for the opportunity to meet you informally yesterday, which I found really welcome.

I welcome the opportunity to engage with the Committee on my office and our plans and budget proposals for the next three years. I have been in office for just over six weeks; in fact, I think it may actually be seven weeks today because I started on a Wednesday. I have a very good handle from the team in the office on where we are in delivering on our strategic objectives, even in this very difficult climate. The Committee may want to follow up a little on the impact of COVID-19.

May I also ask the Committee to indulge me while I say a "Thank you" to Paul McFadden, who, as the Committee will know, held the role of acting ombudsman? I want to thank Paul for the very warm welcome that he has given me and for the very effective and efficient induction. I want to put that on record with the Committee.

The Committee is aware that previous annual budgets have caused some difficulty in planning. The move to a three-year budget really gives both you and me an opportunity to look strategically at the first three years of my appointment. Even though this briefing was arranged at short notice for me, we really welcome the opportunity.

We will continue to prioritise delivering excellence in our maladministration complaints and investigations. As the Committee knows, there has been a really substantial increase in complaints; in fact, they have more than doubled over the past four years, but we are building on the work that we have already undertaken in order to be able to deliver on complaints efficiently and effectively.

I am very committed to enabling us to continue to deliver within our current budget. Members will therefore note that we have built in only the necessary uplifts. I take this opportunity to thank the Committee, because the Committee gave us some extra resource earlier in the year, and we are appreciative of that.

As an office, we have begun to develop our work on learning and improvement. I would like to place further emphasis on that as a strategic priority going forward. Using the knowledge and the insight from complaints in order to enable public services to improve is an integral aspect of ombudsmen's offices across the UK, many of which have been delivering on that aspect of ombudsmen's work for over a decade. As members will know, there is a wealth of learning from complainants' experiences of our public services, and that should be captured and shared. Although my office had begun work on that, it was done on an ad hoc basis, and it cannot be achieved without some dedicated resource. That is why I have included a proposal for an additional two members of staff: in order to build really proactively this work over the next three years; to begin to engage with public services regularly; to begin to analyse complaints and their trends; and to be able to provide annual sectoral responses that look at complaints and areas for improvement. I believe in sharing such analysis and reports with this Committee, and perhaps with other subject-interest Committees, and in allowing the work that comes from complaints to feed into policy development.

I am grateful to the Committee for its support for the commencement of the complaint standards authority (CSA), and I appreciate your writing in on our behalf. For me, that is a good example of something on which my office has had as a strategic focus, but it is now time to make it a reality.

Committee members yesterday raised with me the issue of how complex the complaints landscape is for their constituents, who often feel that they have to go to nine or 10 different organisations or bodies before they get the redress that they need, and how it is really difficult for many people to negotiate that landscape. If we were to introduce the CSA, that would create an opportunity to ensure a fairer, quicker and more straightforward complaints landscape. It is a significant task, in both complexity and scale. We envisage doing it sector by sector, but, perhaps at a later date, I can return to the Committee and share our thoughts and plans with you about that.

I have drawn attention to those particular areas of focus, but I am happy to discuss any of the areas in our paper. I thank the Committee for the opportunity to do so.

The Chairperson (Mr McCrossan): Thank you very much for your opening remarks. I again congratulate you on your appointment to the role and wish you well in it. I know from our discussions yesterday that you are very excited about the challenges ahead. I look forward to engaging with you throughout the process.

I also put firmly on record our sincere thanks to you, Paul, for your work in the interim before the appointment was made and for your assistance in coming before this Committee over the past year. We appreciate it and thank you for your efforts.

I am going to open up the meeting to questions from members.

Mr Allister: I have a couple. I want to understand better the subdivision in the office when it comes to local government investigations. I refer specifically to the investigation of councillors. You have a significant budget for that. Can you explain to the Committee, as briefly as you can, who investigates a complaint when one is made and who then decides on it?

Ms Kelly: I will ask Paul to talk you through the process, because that area of responsibility is separated out.

Mr Paul McFadden (Northern Ireland Ombudsman's Office): The setting in the office is that there is separation between the investigative role and the adjudicative role. Margaret, as ombudsman and commissioner, is the adjudicator. She is completely separated from the receipt, assessment and investigation of complaints, and she gets them only when they are referred, by me as the deputy commissioner, to her for adjudication. A small team in the office — the local government ethical

standards (LGES) directorate — undertakes that assessment, investigation and referral for adjudication, and all the work in between. That is done entirely without the commissioner's knowledge. It is done with full separation. There is a Chinese wall in the office to make sure that there is no access to any of that material, in order to allow the adequate separation of investigative and adjudicative activity.

Mr Allister: You say that there is a Chinese wall. It also has to pass the public credibility test, but when I stand back and look at it, I can see that you, Mr McFadden, are the prosecutor and the ombudsman is the judge.

Mr McFadden: That is right. That is a good way of describing it.

Mr Allister: Does that strike you as a credible process?

Mr McFadden: It does strike me as a credible process. It is one that has worked, and it has withstood four High Court challenges on adjudications. The Committee may be aware that there is a direct appeal route to the High Court on this function.

Mr Allister: Yes.

Mr McFadden: I am speaking off the top of my head, but, of the 14 or so — perhaps more — adjudications to date, four have gone to the High Court. Councils have taken up their right to do that. Each of those adjudications has been upheld. There therefore has been scrutiny.

Mr Allister: Has the judge ever rejected your prosecution of any of the cases that you have prosecuted?

Mr McFadden: There are two points to make. There are various other outcomes within the investigative process. The processes are designed to ensure proportionality, reasonableness and, in the interest of balance, public confidence in local government and ensuring good use of resources, because getting to the adjudicative stage is quite expensive, the ability to seek alternative action throughout the investigative process. Of the 7% or so that have been referred by me to adjudication, all have been upheld by the commissioner.

Mr Allister: All of them: 100%.

Mr McFadden: Yes.

Mr Allister: The prosecutor in the organisation has 100% success with the judge in the same organisation.

Mr McFadden: On the matter of breaches. Only the most egregious, and those for which the investigative side and I feel there is evidence of a breach, will be taken forward. It is within my authority to determine whether there is insufficient evidence of a breach for referral. It is within my powers, as the deputy commissioner, to decide that alternative action can resolve the matter without proceeding through the process. I think that that is entirely proportionate.

Mr Allister: I want to draw out one other point. When you deal with councillors, you have the power to end their career. They can be banned from future service.

Mr McFadden: That is correct.

Mr Allister: When you deal with a complaint against a council for maladministration, you can barely slap its wrist. Is that right?

Mr McFadden: Yes, it is done on an entirely separate legislative basis.

Mr Allister: Yes. That is the contrast. A councillor can see his career ended, but the council is told, "Don't do that again", and it carries on.

Mr McFadden: There is an entirely different statutory framework, which was established by the Assembly.

Mr Allister: It is the reality, however.

Ms Kelly: That is the legislative footing that it is on.

Mr Allister: What are your powers over a council that you find guilty of maladministration?

Ms Kelly: They are the same.

Mr Allister: Or any other public body.

Ms Kelly: At any point, we will write to that public body, draw the issue to its attention and ask it to put in place some particular changes or recommendations, depending on what the issue is. We can make consolatory payments, and we will continue to follow up with the public body. The issue around engagement and enforcement is one of those changes that public bodies may need to make. That is why I want there to be that focus on engagement, impact and learning. It is about going to those public bodies with a pattern and saying "You need to make these changes", or engaging with members of this Committee or other Committees to say that there is a significant issue. They are two different legislative frameworks, however. You are right.

Mr Allister: What is the compensatory ceiling that you can order?

Ms Kelly: It is not set out in that manner. Previously, under previous ombudsmen, we have gone as far as £30,000, possibly even higher.

Mr McFadden: I cannot say specifically, but there is the potential, and I am referring to experience in other ombudsmen's offices, to go wherever the case takes if a complainant has suffered a direct loss as a result of a public body's maladministration. Of course, that is not the primary focus of the maladministration side of the house. Its primary focus is on redress, restoring relationships and holding public services to account.

Mr Allister: Are you involved on that side as well, Mr McFadden?

Mr McFadden: Yes. As the deputy ombudsman, I deputise for Margaret as ombudsman, but I am also the deputy commissioner.

Mr Allister: You state in your report that there were 1,043 complaints.

Ms Kelly: That is right.

Mr Allister: Were all those complaints accepted for investigation?

Ms Kelly: Those are all the complaints, and there are different stages to the process in the office.

Mr Allister: Does that mean that they have all been accepted?

Ms Kelly: If a complaint comes through, we look to see whether it can be accepted and whether it can go to our initial investigation.

Mr Allister: How many of those have been accepted for investigation?

Ms Kelly: I will just need to check.

Mr McFadden: I can perhaps expand on that part of the process. Like any other ombudsman or complaints handling body, we have processes in place to determine those complaints that, first, the organisation can accept under a statutory framework. Secondly, we should take into account factors such as proportionality, reasonableness and the likelihood of achieving a suitable outcome. I have mentioned some of those factors already. Even within some of those factors, there may be, for

example, settlements or early resolutions that achieve some form of resolution or redress for individual complainants, or a decision will be taken not to investigate because there is not sufficient evidence.

Mr Allister: Let me ask the question another way. Of those 1,043 complaints, how many did you decide not to investigate?

Mr McFadden: Just bear with us.

Ms Kelly: I cannot find it in here. I am sorry. Please bear with us. I will come back to you in writing on that, if that is acceptable, Mr Allister.

Mr Allister: You do not have the answer.

Ms Kelly: I would not want to give you an answer that I could not absolutely stand over. I would also like to make a distinction between those complaints that are outwith our ability to investigate and those on which we do a shorter investigation — cases that involve settlement and resolution — or a longer investigation. I outlined to the Committee yesterday how we describe that early part of our work, which often achieves settlement or resolution.

It may help if I give an example of that. We had a case in which someone was given a round of IVF treatment and was presented with two options. The person circled both and, unfortunately, when it was processed, only got one round of treatment. The case was brought to us, and, as part of the resolution, we got an agreement that the individual could have a second round of treatment. There are complaints like that, which we investigate and seek a resolution to, and there are others that are subject to a much longer investigation, which is why we have the different sets of KPIs. I will break down the information very clearly and forward it to you.

Ms Bunting: I want to ask you about the table on page 2 of your briefing paper, Margaret and Paul. I note that your year-on-year increase is 8.4% for one side of the organisation and 9.5% for the other side of the organisation. Those are quite considerable increases. I appreciate that you are taking on two members of staff, and my understanding is that that is on the complaints and standards side of the house.

Ms Kelly: Yes.

Ms Bunting: The figure of 8.4% on the maladministration side is still a significant increase. I have read some of the explanatory notes, but I am still keen to hear from you as to why costs are significant in those particular years but reduce again in subsequent years.

Ms Kelly: It is because we will be putting in place those additional staff in the next year. I will ask John McGinnity, who is our finance person, to explain that in slightly more detail. John, can you do that?

Mr John McGinnity (Northern Ireland Ombudsman's Office): Absolutely, Margaret. Thank you. Chair and members, I will say a little bit about the table. The two sets of percentages are not discrete. At the bottom of the table, the 9.5% refers to the overall budget for the organisation, so it is not purely for local government ethical standards, which, I think, Ms Bunting was interpreting it as. In fact, the table shows that our baseline budget for the local government ethical standards function is remaining constant, in monetary terms, over the projected budgetary period.

As the ombudsman said, the reason for the rather steep looking increase in year 1 of the budget plan is purely down to the plans to initiate, with the Assembly's agreement, the complaint standards authority function and to put in place two additional staff whom Margaret mentioned earlier, for the learning and improvement team, given the plans to focus a dedicated resource on that area. Those are the factors that give rise to the relatively steep increase in year 1. In the years beyond that, we are looking purely at projected cost-of-living increases.

Ms Bunting: Thank you. I have one follow-up question, Chair. In row 2 of the table, there is a reference to "Own Initiative — Staff Cost". Can you explain to us what "own initiative" is in those circumstances, please?

Ms Kelly: Yes. It is the power in the legislation that allows the ombudsman to —

Ms Bunting: To initiate an investigation.

Ms Kelly: — initiate an investigation. We announced and began an own-initiative investigation of the personal independence payment (PIP) and of the extent to which the use of further evidence in PIP claims or the disallowance of PIP claims was effective. That is just beginning to draw to a close. We are at the point of sending, as we always do, draft chapters to the Department for it to check for factual accuracy. Again, when that investigation is complete, the Committee may be interested in seeing that work to understand a wee bit better its extent. I have seen lots of PIP reports, by constituency office members who are dealing with PIP reports and by advice services, that present the perspective of the person claiming, but this goes beyond those PIP claimants and looks behind the system at what is happening and how you end up with those decisions. It will be of real interest. I want to make sure that the ombudsman's office is in a place to respond where significant issues come up and where we feel that there is a systemic issue, so we need that kind of own-initiative investigation. Again, I am sure that members will have an interest in them, if we can undertake those investigations.

Ms Bunting: I appreciate your answering those questions, Margaret. To finish, 9.5% is not a small increase in a budget. I appreciate your intentions to try to clarify the complaints procedures for society in Northern Ireland, and you therefore anticipate there being extra complaints. Beyond the numbers of complaints, however, how will you know, how will we know and how will the public know that a 9.5% budget increase represents value for money?

Ms Kelly: There are a number of ways in which you can know that. I know that we have done some work on this in the past, but, if you look at what it costs when something ends up as a medical negligence claim as opposed to in a complaints process, you will see that the cost to the public purse is hugely different. PIP appeals cost around £14 million, I understand. If we were getting that right, it should cost less. There will be a bit about what additional costs you can stop. For me, a bit will be about determining outcomes for citizens. For example, do citizens find the process easier? Are you finding that the people who come through your constituency office know more easily where to go to? Do public services respond so that they learn and improve more, resulting in fewer of those huge inquiries? That does not happen overnight, and it does not happen without some investment. It does not happen without analysis. To be honest, it also does not happen without your commitment and engagement. All of those things involve looking at the office's outcomes and measuring some of the outcomes of change, but I cannot do that if I do not have the staff to begin to put everything in place.

Mr Chambers: I have a quick question that follows on from what Jim said when he was talking about local councillors. You have the power either to give them a short ban or to expel from public life. In parallel with that is what you can or cannot do to a council. If, in investigating a complaint against a local council, you clearly find that there has been quite bad or unacceptable behaviour by, say, a senior official on that council, is your response always just to the corporate body or do you have any powers to force someone to take action against an official who may be guilty of quite bad or unacceptable behaviour?

Mr McFadden: The view taken on local councils or other public bodies in Northern Ireland is not focused on conduct, as opposed to the ethical standards code of conduct regime, which is looking at elected members being held to a standard under a specifically designed code of conduct and a statutory framework. Our focus in those investigations is not on unacceptable conduct but on the actions of, as you have described it, the body corporate in how it has administered itself within the boundaries of legislation, policy, guidance and appropriate service. There is an entirely different focus on those two different remits and functions, and that makes it hard to draw those parallels. For example, we are not assessing the conduct or practice of individual council officers but rather looking at the conduct of elected members of a council, because that is what the code of conduct is established for. We can do that under the powers that we have.

Mr Chambers: Who holds council officials to account? What overview body can intervene and say, "Look, this is not on"?

Mr McFadden: It is a matter for the council itself to assess and hold its own officials and staff to account for their conduct.

Mr Chambers: It is a political decision taken by the council.

Ms Kelly: I imagine that there would be a process undertaken by the council's HR if particular individuals or officials were involved. It is almost an employment issue. Paul described what we are empowered to do under the legislation.

Ms Bunting: Do you have power to refer issues to do with a council's corporate body to the Local Government Auditor?

Ms Kelly: I am looking at Paul because I do not know yet.

Mr McFadden: Sorry. Can you repeat the first part of the question?

Ms Bunting: If you discover that there is something amiss and awry in how a council operates as a corporate body, do you have the power to refer the issue to the Local Government Auditor?

Mr McFadden: Absolutely. Explicitly under the 2016 Act, for the first time, we have the power to refer any matter to a whole range of bodies. If we were to refer a matter to the Northern Ireland Audit Office (NIAO), for example, it could cover a range of probity issues. We would also seek to share information where perhaps we saw its remit, strategic focus, plans or current work as being more appropriate to catching issues.

I will give an example that relates to PIP. We were aware that the Northern Ireland Audit Office was undertaking one of its audits into the contract management of that PIP arrangement, whereas, as Margaret described, we were looking at PIP from a different angle. We were looking at injustice, individuals and their experience. We would have engaged regularly with the Audit Office and its team on that and passed over information that we felt might be relevant to its contract for it to determine, so, yes, that facility is there with the Audit Office, as it is with a whole range of commissioners and other bodies, I hasten to add.

The Chairperson (Mr McCrossan): Members, time is against us. I have two points to make. Emma, do you have any questions?

Ms Rogan: No. I am fine, thanks.

The Chairperson (Mr McCrossan): Paragraph 4.2 of your briefing paper states:

"The impact of the findings and recommendations arising from investigations undertaken drawing on my own initiative powers are anticipated to be significant and far reaching."

Can you, briefly, provide further examples of that?

Ms Kelly: Within the own-initiative function, we can make recommendations on how systemic change should be addressed. When I look at individual complaints, they will often give me a picture, a metric in time or a snapshot. When I look at my own investigation, I am looking across a range of issues, so what recommendations for action we can propose are much further-reaching, because we are looking at the complaint in a much more systemic way. When our PIP report is complete, I think that members will be interested to see some of it.

The Chairperson (Mr McCrossan): Has there been any update on the commencement of the complaints standards authority role?

Ms Kelly: We have not yet heard back from the Assembly Commission on that. I am keen to see that commenced and put in place, because, as citizens, we really need it.

The Chairperson (Mr McCrossan): Is it possible for us to get information on that?

The Assistant Committee Clerk: We can certainly chase that up and seek a further update.

Ms Kelly: I would appreciate that. Thank you.

Mr McFadden: On the 9.5% increase in the budget, the CSA powers were intended to be commenced —

Ms Kelly: That is right.

Mr McFadden: — earlier in the cycle of the NIPSO, before the suspension of the Assembly. We have always put into our budget plans that, on commencement, that ring-fenced money for the CSA powers would probably have landed earlier in the cycle. It just so happens, with the re-establishment of the Assembly, that they have landed in this year along with Margaret's wider learning and improvement costs.

The Chairperson (Mr McCrossan): Thank you both. That is all we have for you for now. Again, Margaret, best wishes to you, and thank you for appearing before us.

Ms Kelly: Thank you.

Mr McFadden: Thank you.